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KENNETH L. SCHROEDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KENNETH L. SCHROEDER,

Defendant.

No. C 07 3798 JW

**DECLARATION OF
SHIRLI FABBRI WEISS**

Date: March 24, 2008
Time: 9:00 a.m.
Courtroom: 8
Judge: Hon. James Ware

1 I, Shirli Fabbri Weiss, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am admitted
3 to practice before this honorable Court. I am one of the attorneys representing Defendant
4 Kenneth L. Schroeder in this case.

5 2. Attached as Exhibit 1 hereto is a true and correct copy of Kathryn Hayes Tucker,
6 *Ex-Prosecutor Dishes Up Advice to GCs on Government Probes*, Fulton County Daily Report,
7 Oct. 19, 2007.

8 3. Attached as Exhibit 2 hereto is a true and correct copy of the Complaint filed in
9 *SEC v. Berry*, No. C 07-4431 (N.D. Cal. Aug. 28, 2007).

10 4. Attached as Exhibit 3 hereto is a true and correct copy of a press release issued by
11 the Securities and Exchange Commission: SEC Charges Former KLA-Tencor CEO With Fraud
12 For Improper Stock Options Backdating: Commission Also Settles Claims Against KLA-Tencor
13 (July 25, 2007), obtained from the SEC's website.

14 5. Attached as Exhibit 4 hereto is a true and correct copy of Siobhan Hughes, *3rd*
15 *UPDATE: SEC Charges Former KLA-Tencor CEO In Backdating*, Wall Street Journal Online,
16 July 25, 2007.

17 6. Attached as Exhibit 5 hereto is a true and correct copy of the Consent of Defendant
18 KLA-Tencor Corporation to Entry of Final Judgment, *SEC v. KLA-Tencor Corp.*, No. C 07-3799
19 (N.D. Cal. July 25, 2007).

20 7. Attached as Exhibit 6 hereto are true and correct excerpts of KLA-Tencor
21 Corporation's Annual Report (Form 10-K) (Jan. 29, 2007), obtained from the 10-K Wizard
22 website.

23 8. Attached as Exhibit 7 hereto is a true and correct copy of KLA-Tencor
24 Corporation's Current Report (Form 8-K) (May 24, 2006), obtained from the 10-K Wizard
25 website.

26 9. Attached as Exhibit 8 hereto is a true and correct copy of a letter from John
27 Hemann, Morgan Lewis & Bockius LLP ("MLB"), to the SEC, dated June 29, 2007, and true and
28 correct excerpts of a power point presentation on the stationary of MLB, which I selected from

1 the power point presentation enclosed with the letter. This exhibit was produced by the SEC as
2 part of its initial disclosures under Federal Rule of Civil Procedure 26(a) on October 3, 2007, and
3 I selected excerpts of the power point presentation to illustrate points that MLB made about the
4 nature and extent of KLA's cooperation with the SEC in its investigation of KLA's stock option
5 grant practices.

6 10. Attached as Exhibit 9 hereto is a true and correct copy of the transcript of the
7 deposition of Stuart J. Nichols, taken January 27, 2008.

8 11. Attached as Exhibit 10 hereto is a true and correct copy of a letter from Joseph E.
9 Floren, MLB, to Shirli Fabbri Weiss, dated January 24, 2008.

10 12. Attached as Exhibit 11 hereto is a true and correct copy of the Notice of Subpoena
11 for Records to Skadden, Arps, Slate, Meagher & Flom LLP, dated November 12, 2007.

12 13. Attached as Exhibit 12 hereto is a true and correct copy of Non-Party Skadden,
13 Arps, Slate, Meagher & Flom LLP's Responses and Objections to Defendant Kenneth L.
14 Schroeder's Subpoena for Records, dated December 10, 2007.

15 14. Attached as Exhibit 13 hereto is a true and correct copy of a letter from Matthew
16 E. Sloan, Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), to Shirli F. Weiss, dated
17 December 27, 2007, as part of the "meet and confer" process to attempt to resolve differences
18 over Mr. Schroeder's subpoena to Skadden attorney Elizabeth Harlan requesting that she produce
19 her original notes of KLA's Board's Special Committee's interview of defendant Kenneth
20 Schroeder, as well as drafts of the interview memoranda created by Skadden based on the notes,
21 the final version of which was volunteered to the SEC by the Special Committee. As to those
22 notes, of importance, Mr. Sloan states on page 2:

23 "...we will not produce any of Ms. Harlan's handwritten notes
24 about the interviews, or any "drafts" or revisions of the interview
25 memoranda, and we will not allow her to answer any questions on
26 such handwritten notes or drafts, as such information is squarely
protected by the attorney work product doctrine. *See Hickman v.*
Taylor, 329 U.S. 495, 508."

27 Ms. Harlan's deposition was the first deposition noticed by the SEC in this case (and cross-
28 noticed by Mr. Schroeder's counsel), and we sought the documents to prepare to cross-examine

1 Ms. Harlan. Skadden refused to produce the original interview notes of Mr. Schroeder's
2 interview, as well as the original interview notes underlying the Interview Memoranda that KLA
3 produced to the SEC, on grounds of privilege and work product protection.

4 15. Attached as Exhibit 14 hereto is a true and correct copy of a Confidentiality
5 Agreement between KLA and the SEC, dated October 12, 2006, which was provided to me by the
6 SEC.

7 16. Attached as Exhibit 15 hereto is a true and correct copy of a memorandum from
8 Lisa Berry of KLA to Larry Sonsini and Judith Mayer O'Brien of the law firm of Wilson Sonsini
9 Goodrich & Rosati ("WSGR"), dated November 14, 1998. This document was produced by the
10 SEC as part of its initial disclosures under Federal Rule of Civil Procedure 26(a) on October 3,
11 2007. It is my understanding that KLA provided this document to the SEC. Of particular
12 importance to the defense of this case, Ms. Berry stated in her memorandum that:

13 We got approval from Pricewaterhouse Coopers to have the stock
14 option committee meet at some time during the 30 days following
15 August 31 and set the price for re-pricing at that time in order to
16 maximize the value to employees. The re-pricing date ended up
being August 31, but it was not determined until September 30 that
the August 31 date was the correct date. The re-pricing date was
also to be the date for the grant of "in lieu" options.

17 17. Attached as Exhibit 16 hereto is a true and correct copy of emails among Leslie
18 Wilson of KLA, Roger Stern of WSGR and others, dated September 20-23, 1999. This document
19 was provided by the SEC as part of its initial disclosures under Federal Rule of Civil Procedure
20 26(a) on October 3, 2007. It is my understanding that KLA provided this document to the SEC.
21 The following exchange, excerpted from those emails, is very significant to this case. On
22 September 20, 1999, Ms. Wilson asked Mr. Stern a question concerning retroactive pricing:

23 If we choose to communicate that grants will be made between
24 now and the end of the year, and that the price will be
25 communicated after the Board (or compensation committee)
26 action, does that mean that we will lose the opportunity to capture
stock prices from August 31st to date of new employee
communication?

27 Mr. Stern responded that:
28

I'm not quite sure what is meant by "capture stock prices from August 31 to date of new employee communication." The price will be set on the date of the comp committee meeting, and will be 100% of the trading value on that day. So I think the communication sent out already captures that. I apologize if I am being obtuse, please feel free to clarify.

Ms. Wilson replied on September 21, 1999 that:

In the past, the Compensation Committee meets on a day following the determination of the individual employee stock option allocations. For FY00, this means that they could have met or are yet to meet on any day following August 27th to set the stock price. [Note the use of the hypothetical.] I agree that the communication already clearly states this.

* * *

I am concerned that sending additional communication may imply that the Compensation Committee has not yet met and is yet to meet between now (e.g. September 21) and the end of the year, thereby not allowing us to price the stock grant between August 27 and today even if the committee met during that period.

Mr. Stern replied:

I see the point. No, it is not necessary to send out an additional employee communication in this situation. The original communication seems to capture the situation appropriately. Hope this helps!

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2008.

/s/Shirli Fabbri Weiss
Shirli Fabbri Weiss

I hereby attest that I have on file all holographic signatures for any signatures indicated by a "conformed" signature (/S/) within this e-filed document.

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